INDIANA JUDICIAL CENTER

CASE CLIPS

Selected decisions of the Indiana appellate courts abstracted for judges by the Indiana Judicial Center.

VOL. XXVIII, NO. 1 **January 5, 2001**

CRIMINAL LAW ISSUE

JOHNSON v. STATE, 49S05-0008-CR-506, ___ N.E.2d ___ (Ind. Jan. 3, 2001).
SHEPARD, C. J.

This interlocutory appeal arose when a prosecutor missed a deadline for notifying the defendant of the State's intent to use Indiana Rule 404(b) evidence in a molestation case. The trial court excluded the evidence, then dismissed the charge at the State's request, over the defendant's objection. Nine days later, the prosecutor refiled the original sexual misconduct charge along with ten additional charges that partially encompassed the evidence the court had excluded. The Court of Appeals held that the refiling was proper. Johnson v. State, 732 N.E.2d 259 (Ind. Ct. App. 2000).

. . . .

On September 9, 1998, the trial court entered an initial hearing discovery order requiring the State to give thirty days notice of intent to present any evidence of prior misconduct under Rule 404(b). [Footnote omitted.] The State gave such notice on April 23, 1999, when it filed its final witness and exhibit list, including as witnesses four other female Fairbanks Hospital patients. Although the State had listed all four as potential witnesses in the original charging document, Johnson filed a motion in limine on April 26, 1999, asserting that the State had failed to give formal 404(b) notice disclosing the nature of the testimony to be offered by these witnesses.

The trial court granted the motion in limine and excluded the 404(b) evidence. The prosecutor responded with a motion to dismiss the charge, which the court also granted. Johnson immediately objected in writing, stating that he was ready to proceed to trial and arguing that, based upon the State's declared intent to refile the case, the dismissal should be with prejudice.[2]

On May 5, 1999, the State refiled the original charge and added ten more counts:. . . .

This Court discussed dismissal and refiling of charges as a prosecutorial tactic in Davenport v. State, 689 N.E.2d 1226 (Ind. 1997), *modified on reh'g*, 696 N.E.2d 870 (Ind. 1998). . . .

This Court held that "[w]hile courts have allowed the State significant latitude in filing a second information, the State cannot go so far as to abuse its power and prejudice a defendant's substantial rights." 689 N.E.2d at 1230.[3]. . .

. . . .

[2] Under Ind. Code § 35-34-1-13(a), a prosecuting attorney may move for dismissal of the information at any time prior to sentencing. The trial court must grant the motion so long as it states a reason for the dismissal. Davenport v. State, 689 N.E.2d 1226, 1229 (Ind. 1997) (citing Burdine v. State, 515 N.E.2d 1085, 1089 (Ind. 1987)). Johnson does not challenge the dismissal, but argues that it should have been with prejudice, to foreclose refiling of the charge. [Citation to Brief omitted.]

[3] The Davenport opinion notes that "the State does not necessarily prejudice a defendant's substantial rights by dismissing an information in order to avoid an adverse evidentiary ruling and then refiling an information for the same offense." 689 N.E.2d at 1229 (emphasis added). The question of substantial prejudice is a fact-sensitive inquiry, not readily amenable to bright-line rules.

Although this case arose from the exclusion of evidence rather than denial of permission to add charges, the reasoning of Davenport and [State v.] Klein [702 N.E.2d 771 (Ind. Ct. App. 1998)] is pertinent. In each case, the State sought to take some action (i.e., to add charges or to offer evidence of other acts of misconduct) that would require the defendant to revise his defense strategy at the eleventh hour. In each case, the trial court concluded that the State did not have a good reason for the delay or lack of notice. In each case, the court properly forbade the action as taken too late. In each case, the prosecutor sought to dodge the adverse ruling via dismissal and refiling.

The equities weigh even more heavily in Johnson's favor than in either Davenport or Klein. By refiling, the State attempted not only to evade the court's ruling and get a second shot at offering 404(b) evidence, but also to subject Johnson to ten additional charges.

If the State may circumvent an adverse evidentiary ruling by simply dismissing and refiling the original charge, and also "punish" the defendant for a successful procedural challenge by piling on additional charges, defendants will as a practical matter be unable to avail themselves of legitimate procedural rights.

Here, no new evidence was discovered between the dismissal and refiling. No elements of the additional charged crimes were completed during that interim. No honest mistake or oversight occurred in the original decision to prosecute. [Citation omitted.]

Based on the circumstances presented, we conclude that the State exceeded the boundaries of fair play. . . .

As a matter of equity, the proper remedy is to restore the defendant to something like the status quo ante. The State may proceed on the original count of sexual misconduct under the trial court's original ruling excluding the Rule 404(b) evidence. [Footnote omitted.] Or, the State may forego the original charge and pursue another charge carrying a similar potential penalty, with the opportunity to offer Rule 404(b) evidence if timely notice is given and the trial court rules favorably on admissibility.

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BOEHM, DICKSON, and RUCKER, JJ., concurred.
SULLIVAN, J., dissented and would deny transfer without filing a separate written opinion.

CIVIL LAW ISSUES

GEN. HOUSEWARES CORP. v. NAT'L SUR. CORP., No. 49A04-9906-CV-282, ___ N.E.2d ___ (Ind. Ct. App. Dec. 28, 2000).
SULLIVAN, J.

[2]

Housewares claims that the trial court erred by applying the "known loss" doctrine to its third-party liability insurance policies. Both parties claim, and our research reveals, that no Indiana court has recognized this doctrine. Therefore, this is a matter of first impression in Indiana.

. . . Simply put, the known loss doctrine states that one may not obtain insurance for a loss that has already taken place. [Citation omitted.] Describing the known loss doctrine, commentators have noted that "losses which exist at the time of the insuring agreement, or which are so probable or imminent that there is insufficient 'risk' being transferred between the insured and insurer, are not proper subjects of insurance." [Citation omitted.]

This principle has been referred to by various names, including "loss in progress," "known risk," and "known loss." [Footnote omitted.] [Citation omitted.] "Loss in progress" refers to the notion that an insurer should not be liable for a loss which was in progress before the insurance took effect. [Citation omitted.] Although the term "known loss" has

been limited to those situations where a loss has actually occurred, [citation omitted] most courts have defined the doctrine to also include losses which are "substantially certain" to occur or which were a "substantial probability." [Citation omitted.] . . .

. . . .

In the present case, both parties suggest that the known loss doctrine should depend upon a party's actual knowledge. We agree. The very term "known loss" indicates that actual knowledge upon behalf of the insured is required before the doctrine will apply. [Footnote omitted.] This is ordinarily a question of fact. [Citation omitted.]

Exactly what the insured is required to know before the known loss doctrine will apply must also be determined. As noted above, there has been no unanimity among courts which have considered this issue. [Citation omitted.] Some courts merely require knowledge of a "substantial probability" of loss. See, e.g., Outboard Marine, [Corp. v. Liberty Mut. Ins. Co. (1992) Ill., 607 N.E.2d 1204] supra, 607 N.E.2d at 1210. The First Circuit, in [United States Liab. Ins. Co. v.] Selman, [(1995) 1st Cir., 70 F.3d 684] supra, 70 F.3d at 691, adopted a "substantially certain" test. . . . [W]e prefer the language in Selman to that of Outboard Marine.

. . . [A] "substantially certain" loss is one that is not only likely to occur, but is virtually inevitable. The inquiry should be more of temporality than probability—when an event will occur, not whether an event will occur. We also note that, because the effect of the known loss doctrine is to avoid coverage, the burden of proving that the loss was known is on the party seeking to avoid coverage. [Citation omitted.] . . .

. . . .

[T]he known loss doctrine is not so much an exception, limitation, or exclusion as it is a principle intrinsic to the very concept of insurance. [Citation omitted.] [D]espite the fact that the policies at issue failed to mention the known loss doctrine, we hold that it is applicable to these policies.

. . . .

BAILEY and VAIDIK, JJ., concurred.

D.S.I. v. NATARE CORP., No. 49A02-0001-CV-50, ___ N.E.2d ___ (Ind. Ct. App. Dec. 29, 2000).

FRIEDLANDER, J.

The trial court awarded attorney fees to Natare pursuant to IC § 34-52-1-1(b)(1), which provides: "In any civil action, the court may award attorney's fees as part of the cost to the prevailing party, if the court finds that either party: brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless[.]" This statute specifies that, as a threshold requirement, attorney fees may only be recovered by a "prevailing party."

The court's conclusion that Natare is a prevailing party and thus entitled to attorney

fees is based upon Finding of Fact No. 21, which states: "While this cause was disposed by a Settlement Agreement, Natare obtained an enforceable injunction against DSI and others for future actions. Natare had sought that injunction from the first day counsel for Natare appeared in the case." [Citation to Record omitted.] We need not review this finding for clear error because D.S.I. does not dispute its accuracy. Therefore, we proceed to the second part of our analysis, which consists of a de novo review of the legal conclusion that a party who obtains an injunction under such circumstances is a "prevailing party" within the meaning of IC § 34-52-1-1(b).

We find no Indiana case that addresses the application of IC § 34-52-1-1 in this particular circumstance, nor do the parties bring one to our attention. . . .

. . . .

We are aware that both [*Indiana State Bd. of Public Welfare v.*] *Tioga Pines Living Center, Inc.* [622 N.E.2d 935 (Ind. 1993), *cert. denied*, 510 U.S. 1195 (1994)] and

Dickinson [*v. Indiana State Election Board*, 817 F.Supp. 737 (S.D. Ind. 1992)] addressed the meaning of "prevailing party" in the context of § 1988, not IC § 34-52-1-1. Nevertheless, the two provisions focus upon the same subject matter, albeit in different contexts—the former authorizes attorney fees in actions brought under 42 U.S.C. § 1983, while the latter is Indiana's general attorney fees statute. We perceive no meaningful distinction between the two contextual frameworks for purposes of determining the meaning of the term common to both, i.e., "prevailing party". In short, we conclude that "prevailing party" means the same in either setting, and therefore *Tioga Pines Living Center, Inc.* and *Dickinson* are useful in determining the meaning of "prevailing party" as that term is used in IC § 34-52-1-1. . . .

. . . .

Consistent with *Tioga Pines Living Center, Inc.* and *Dickenson*, a party is a "prevailing party" within the meaning of IC § 34-52-1-1, if that party successfully prosecutes its claim or asserts its defense. According to *State Wide Aluminum* [*, Inc. v. Postle Distributors Inc.*, 626 N.E.2d 511 (Ind. Ct. App. 1993), *trans. denied*] and [*State ex rel.*] *Prosser* [*v. Indiana Waste Systems, Inc.*, 603 N.E.2d 181 (Ind. Ct. App. 1992)], the requisite successful litigation must culminate in a judgment. . . . [T]he judgment alluded to in *State Wide Aluminum* and *Prosser* may take the form of an agreed entry or stipulation, so long as it resolved the dispute generally in the favor of the one requesting attorney fees and altered the litigants' legal relationship in a way favorable to the requesting party. In conducting the latter inquiry, we are to focus upon the requisite judgment in the specific context of the substance, issues, and nature of that particular litigation.

. . . .

BARNES and DARDEN, JJ., concurred.

GDC ENVTL. SERV., INC., v. RANSBOTTOM LANDFILL, No. 43A04-0004-CV-157, ___ N.E.2d ___ (Ind. Ct. App. Dec. 29, 2000).

NAJAM, J.

Based upon the clear language of our Licensing Act [Indiana Code Section 25-34.1 et seq.,] as well as the cases applying that language, we conclude that Indiana follows the majority rule that a salesperson or broker who does not have a license to sell real estate is not entitled to any commission from the sale of business assets which include an interest in real estate, no matter how de minimus. It follows that a contract made in violation of the Licensing Act is void and unenforceable. [Citation omitted.]

. . . .

In the present case, we agree with the trial court that the language of the Agreement is unambiguous and clearly contemplated broker services. . . . GDC specifically contracted for the exclusive right to offer for sale, and promised to use its efforts to sell, the

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Ransbottoms' Assets, which included an interest in real estate. [Footnote omitted.] It is undisputed that the Agreement was "calculated to result" in the sale of the real estate included in the Ransbottoms' Assets. [Citation omitted.] . . .

. . . .

BROOK and SULLIVAN, JJ., concurred.

JUVENILE LAW ISSUE

MATTER OF J. T., No. 49A02-0007-JV-448, ___ N.E.2d ___ (Ind. Ct. App. Dec. 29, 2000).

FRIEDLANDER, J.

Stanley Tavorn appeals the involuntary termination of his parental relationships with his minor sons, J.T., E.T., and R.T. . . .

. . . .

In 1995, Stanley was convicted in Florida of aggravated battery with intent to harm; in 1996, he was convicted of aggravated battery with a deadly weapon. Stanley remains incarcerated in Florida with a current release date of August 24, 2023.

. . . .

Stanley first contends that he was denied due process because the court did not secure his physical presence at the hearing on the OFC's petition to terminate the parent-child relationships. [Footnote omitted.] Stanley points out that, pursuant to Indiana Code § 31-32-2-3(b), a parent in proceedings to terminate the parent-child relationship is specifically entitled to (1) cross-examine witnesses, (2) obtain witnesses or tangible evidence by compulsory process, and (3) introduce evidence on behalf of the parent. He insists that those statutory rights include the right to be present at the hearing to assist counsel.

. . . Citing *Mathews v. Eldridge*, 424 U.S. 319 (1976), this court has recently acknowledged that the nature of the process due in parental rights termination proceedings turns on a balancing of three factors: (1) the private interests affected by the proceeding, (2) the risk of error created by the State's chosen procedure, and (3) the countervailing governmental interest supporting use of the challenged procedure. [Citation omitted.]

. . . .

In balancing the *Mathews* factors, we hold that the trial court's failure to secure Stanley's physical presence at the termination hearing did not deny Stanley due process of law. Our conclusion comports with the rule of law stated by other jurisdictions, namely, that an incarcerated parent has no absolute right to be physically present at the termination hearing. *See Adoption of Edmund*, 2000 WL 1753956, at *2 n.4 (Mass. App. Ct. 2000) (citing cases); *In re Adoption No. 6Z980001*, 748 A.2d 1020, 1023 n.2 (Md. Ct. Spec. App. 2000) (citing cases). In general, the decision whether to permit an incarcerated person to attend such a hearing rests within the sound discretion of the trial court.[3]

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[3] The Supreme Court of Nebraska has provided the following guidance:

> In deciding whether to allow a parent's attendance at a hearing to terminate parental rights, notwithstanding the parent's incarceration or other confinement, a court may consider the delay resulting from prospective parental attendance, the need for disposition of the proceeding within the immediate future, the elapsed time during which the proceeding has been pending before the juvenile court, the expense to the State if the State will be required to provide transportation for the parent, the inconvenience or detriment to parties or witnesses, the potential danger or security risk which may occur as a result of the parent's release from custody or confinement to attend the hearing, the reasonable availability of the parent's testimony through a means other than parental attendance at the hearing, and the best interests of the parent's child or children in reference to the parent's prospective physical attendance at the termination hearing.

In re Interest of L.V., 482 N.W.2d 250, 258-59 (Neb. 1992).

BAILEY and MATTINGLY, JJ., concurred.

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CASE CLIPS TRANSFER TABLE

January 5, 2001

This table lists recent grants of transfer by the Indiana Supreme Court for published decisions of the Court of Appeals. It includes Judicial Center summaries of the opinions of the Court of Appeals vacated by the transfers and of the Supreme Court's opinions on transfer.

A CASE CLIPS transfer information feature was suggested by the Justices of the Indiana Supreme Court in response to trial court requests for more accessible information about grants of transfer. The table is prepared with assistance from the Supreme Court Administrator's Office, which sends the Judicial Center a weekly list of transfer grants.

A grant of transfer vacates the opinion of the Court of Appeals: "[i]f transfer be granted, the judgment and opinion or memorandum decision of the Court of Appeals shall thereupon be vacated and held for naught, except as to any portion thereof which is expressly adopted and incorporated by reference by the Supreme Court, and further, except where summarily affirmed by the Supreme Court." Indiana Appellate Rule 11(B)(3).

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Owens Corning Fiberglass v. Cobb	714 N.E.2d 295 49A04-9801-CV-46	Defense should have received summary judgment as plaintiff showed only that he might have been exposed to its asbestos	01-19-00	
Sears Roebuck & Co. v. Manuilov	715 N.E.2d 968 73A01-9805-CV-193	(1) evidence of plaintiff's domestic violence before and after slip and fall was admissible, given his expert's opinion malingerers are often wife beaters and plaintiff told him he did not abuse spouse; (2) physician's opinion plaintiff had post-concussion syndrome caused by fall was inadmissible given testimony that scientific cause of syndrome was unknown and expert had not eliminated other possible causes; and (3) a psychiatrist was incompetent to opine about physical brain damage and about the likelihood of the plaintiff resuming his career.	2-17-00	
Krise v. State	718 N.E.2d 1136 16A05-9809-CR-460	(1) officers' entry into home to serve body attachment not illegal; (2) roommate gave voluntary consent to search; (3) scope of consent extended to defendant's purse located in common bathroom	2-17-00	
Elmer Buchta Trucking v. Stanley	713 N.E.2d 925 14A01-9805-CV-164	(1) Wrongful Death Act mandates recovery of the entire amount of a decedent's lost earnings without an offset for personal maintenance, and (2) defense not entitled to instruction that action not to punish defendant and that any award of damages could not include compensation for grief, sorrow, or wounded feelings	2-17-00	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Hancock v. State	720 N.E.2d 1241 34A02-9808-CR-657	Conviction for breath-alcohol formulation of I.C. 9-30-5-1, not challenged at trial but later held unenforceable in Court of Appeals' *Sales v. State*, was fundamental error [Note - *Sales* was vacated by transfer 1-18-00 and statute held enforceable in opinion at 723 N.E.2d 416]	2-22-00	
Rheem Mfg. v. Phelps Htg. & Air Cond.	714 N.E.2d 1218, 49A02-9807-CV-620	1) failure of essential purpose of con-tract's limited remedy does not, without more, invalidate a wholly distinct term excluding consequential damages; (2) genuine issues of material fact as to whether the cumulative effect of manufacturer's actions was commercially reasonable precluded summary judgment as to validity of consequential damages exclusion; and (3) genuine issues of material fact as to whether distributor acted as manufacturer's agent precluded summary judgment as to warranty claims	3-23-00	
Noble County v. Rogers	717 N.E.2d 591 57A03-9903-CV-124	Claim brought against governmental entity under Trial Rules for wrongfully enjoining a party is not barred by immunity provisions of Indiana Tort Claims Act.	3-23-00	
G & N Aircraft, Inc. v. Boehm	703 N.E.2d 665 49A02-9708-CV-323,	(1) evidence was sufficient to support breach of fiduciary duty claim against majority shareholder; (2) order directing corporation and majority shareholder to buy out minority shareholder at full value of his shares did not violate appraisal provision of dissenter's rights statute; (3) evidence supported finding that corporation breached fiduciary duty to minority .	3-23-00	
Latta v. State	722 N.E.2d 389 46A02-9811-PC-478	Dual representation of wife and husband in murder prosecution left wife with ineffective assistance of counsel, when husband invoked privilege to remain silent when questioned about wife's role, his silence was used against the wife, and counsel did not cross-examine him about his silence, and when counsel's final argument asked jury to assume husband's confession was to cover up wife's crime	3-29-00	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Lockett v. State	720 N.E.2d 762 02A03-9905-CR-184	Officer's question whether motorist had any weapons in the car or on his person impermissibly expanded a legitimate traffic stop	3-29-00	
Clear Creek Conservancy District v. Kirkbride	719 N.E.2d 852 67A05-9904-CV-152	Failure to use statutory opportunities to protest and attend hearing on conservancy district assessments did not preclude Trial Rule 60(B)(1) excusable neglect relief from assessments	4-12-00	
Galligan v. Galligan	712 N.E.2d 1028 10A01-9807-CV-256	Minority shareholders were not limited to statutory appraisal remedy against corporation and could sue individual directors, when sale of corporate assets was not in compliance with appraisal remedy sale requirements	4-12-00	
Durham v. U-haul International	722 N.E.2d 355 49A02-9811-CV-940	Punitive damages are available in wrongful death actions	5-04-00	
Fratus v. Marion Community School Board	721 N.E.2d 280 27A02-9901-CV-12	(1) Indiana Education Employment Relations Board (IEERB) did not have jurisdiction over teachers' claim against union for breach of its duty of fair representation, and (2) IEERB did not have jurisdiction over teachers' tort and breach of contract claims against school board	5-04-00	
Bemenderfer v. Williams	720 N.E.2d 400 49A02-9808-CV-663	Wrongful death action continues despite death of surviving dependent beneficiary during pendency of the action.	5-04-00	
Carter v. State	724 N.E.2d 281 02A03-9905-PC-191	Guilty plea was properly accepted despite Defendant's statement he was pleading guilty because he could not prove he was innocent, when statement was made at hearing on acceptance of the plea and plea bargain prior to court's accepting it.	5-24-00	
McCarthy v. State	726 N.E.2d 789 37A04-9903-CR-108	Reversible error in teacher's sexual misconduct prosecution to prevent his cross-examination of child's mother about her filing notice of tort claim against school and possible intent to sue defendant personally.	6-08-00	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Zimmerman v. State	727 N.E.2d 714 77A01-9909-CV-318	Cases hold no appeal lies from a prison disciplinary action, but here inmate could bring a civil mandate action to compel DOC to comply with a clear statutory mandate.	8-15-00	
Troxel v. Troxel	720 N.E.2d 731 71A04-9904-CV-162	Requirement that will must be filed for probate within 3 years of death is jurisdictional and may be raised at any time, not just in will contest within 5 months of admission to probate.	8-15-00	
Turner v. City of Evansville	729 N.E.2d 149 82A05-9908-CV-358	Statutory amendments permitting modifications of merit system ordinance after certain date applied retro-actively to city's modifications of its merit system ordinance; police chiefs were "officers" subject to constitutional residency requirement; acts of police chiefs were valid as acts of de facto officers; and agreement between city and union regarding changes to merit system ordinance did not violate nondelegation rule.	8-15-00	
Felsher v. City of Evansville	727 N.E.2d 783 82A04-9910-CV-455	University was entitled to bring claim for invasion of privacy; professor properly enjoined from appropriating "likenesses" of university and officials; professor's actions and behavior did not eliminate need for injunction; and injunction was not overbroad..	8-15-2000	
Dow Chemical v. Ebling	723 N.E.2d 881 22A05-9812-CV-625	State law claims against pesticide manufacturer, with exception of negligent design, were preempted by federal FIFRA pesticide control act; pest control company provided a service and owed duty of care to apartment dwellers, precluding summary judgment.	8-15-00	
Sanchez v. State	732 N.E.2d 165 92A03-9908-CR-322	Instruction that jury could not consider voluntary intoxication evidence did not violate Indiana Constitution	9-05-00	
South Gibson School Board v. Sollman	728 N.E.2d 909 26A01-9906-CV-222	Denying student credit for all course-work he performed in the semester in which he was expelled was arbitrary and capricious; summer school is not included within the period of expulsion which may be imposed for conduct occurring in the first semester	9-14-00	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Johnson v. State	725 N.E.2d 984 71A03-9906-CR-225	Threat element of intimidation crime was not proven by evidence defendant showed his handgun to victim	9-14-00	
Poynter v. State	733 N.E.2d 500 57A03-9911-CR-423	At both pretrials Court advised nonindigent defendant he needed counsel for trial and defendant indicated he knew he had to retain lawyer but was working and had been tired; 2nd pretrial was continued to give more time to retain counsel; trial proceeded when defendant appeared without counsel; record had no clear advice of waiver or dangers of going pro se - conviction reversed.	10-19-00	
Ellis v. State	734 N.E.2d 311 10A05-9908-PC-343	When judge rejected 1st plea bargain he stated specifically what he would accept; 2nd agreement incorporated what judge had said was acceptable; P-C.R. denial affirmed, on basis plea voluntary despite judge's "involvement" in bargaining; opinion notes current ABA standards permit court to indicate what it will accept and may be used by trial judges for guidance.	10-19-00	
Moberly v. Day	730 N.E.2d 768 07A01-9906-CV-216	Fact issue as to whether son-in-law was employee or independent contractor precluded a summary judgment declaring no liability under respondeat superior theory; and Comparative Fault Act has abrogated fellow servant doctrine.	10-24-00	
Shambaugh and Koorsen v. Carlisle	730 N.E.2d 796 02A03-9908-CV-325	Elevator passenger who was injured when elevator stopped and reversed directions after receiving false fire alarm signal brought negligence action against contractors that installed electrical wiring and fire alarm system in building. Held: contractors did not have control of elevator at time of accident and thus could not be held liable under doctrine of res ipsa loquitur.		

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
S.T. v. State	733 N.E.2d 937 20A03-9912-JV-480	No ineffective assistance when (1) defense counsel failed to move to exclude two police witnesses due to state's failure to file witness list in compliance with local rule and (2) failed to show cause for defense failure to file its witness list under local rule with result that both defense witnesses were excluded on state's motion	10-24-00	
Tapia v. State	734 N.E.2d 307 45A03-9908-PC-304	Reverses refusal to allow PCR amendment sought 2 weeks prior to hearing or to allow withdrawal of petition without prejudice	11-17-00	
Tincher v. Davidson	731 N.E.2d 485 49A05-9912-CV-534	Affirms mistrial based on jury's failures to make comparative fault damage calculations correctly	11-22-00	
Burton v. Estate of Davis	730 N.E.2d 800 39A05-9910-CV-468	Wrongful death and survival statutes allow estate of deceased motorist to bring claim against other motorist and employer for tort of intentional interference with civil litigation by spoliation of evidence from the automobile accident	11-22-00	
Brown v. Branch	733 N.E.2d 17 07A04-9907-CV-339	Oral promise to give house to girlfriend if she moved back not within the statute of frauds.	11-22-00	
New Castle Lodge v. St. Board of Tx. Comm.	733 N.E.2d 36 49T10-9701-TA-113	Fraternal organization which owned lodge building was entitled to partial property tax exemption	11-22-00	
Gallant Ins. Co. v. Isaac	732 N.E.2d 1262 49A02-0001-CV-56	Insurer's agent had "inherent authority" to bind insurer, applying case holding corp. president had inherent authority to bind corp. to contract	11-22-00	